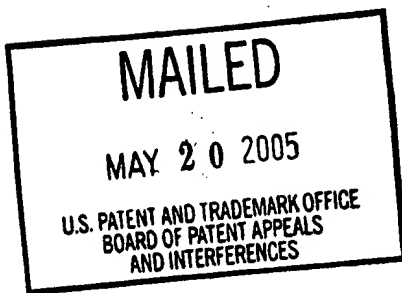


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MELISSA DEE AQUINO,
I-CHUN JENNIFER CHIAO,
and CHANDRIKA KASTUR



Appeal No. 2005-1026
Application No. 09/831,782

ON BRIEF

Before WARREN, WALTZ, and PAWLIKOWSKI, Administrative Patent Judges.

WALTZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the primary examiner's final rejection of claims 1 through 10, which are the only claims pending in this application. We have jurisdiction pursuant to 35 U.S.C. § 134.

According to appellants, the invention is directed to containers for use in disposing of food wastes where the container is constructed from liquid impervious walls, including an absorbent material to contain liquid wastes and an odor-neutralizing

Appeal No. 2005-1026
Application No. 09/831,782

cyclodextrin composition deposited on the absorbent material (Brief, page 2). Appellants state that "all Claims 1-10 stand or fall together" (*id.*). Accordingly, we select claim 1 from this grouping of claims and limit our consideration to this claim. See 37 CFR § 1.192(c)(7)(2003); *In re McDaniel*, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002). Representative independent claim 1 is reproduced below:

1. A container for use in the disposal of food wastes, the container comprising:
a liquid impervious wall having inner and outer surfaces,
an absorbent material having deposited thereon an effective amount of an odor-neutralizing composition for neutralizing odors emitted by food wastes;
the odor-neutralizing composition comprising cyclodextrin;
wherein the absorbent material is inside the container.

The examiner has relied on the following references as evidence of obviousness:

Caggiano	4,861,632	Aug. 29, 1989
Kannankeril	4,927,010	May 22, 1990
Trinh et al. (Trinh)	5,429,628	Jul. 04, 1995
Guarracino et al. (EP '390) (published European Patent Application) ¹	0 811 390 A1	Dec. 10, 1997

¹The examiner inadvertently omits this reference from the listing of "Prior Art of Record" (Answer, page 3, ¶(9)). However, since this reference was positively recited in the statement of the rejection both in the final Office action (page 3) and the Answer (page 4), and appellants were aware of this
(continued...)

Claims 1-5 and 7-9 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Caggiano or Kannankeril in view of Trinh (Answer, page 3). Claims 6 and 10 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Caggiano or Kannankeril in view of EP '390 (Answer, page 4).² We *affirm* all of the rejections on appeal essentially for the reasons stated in the Answer and those reasons set forth below.

OPINION

A. *The Rejection over Caggiano, Kannankeril and Trinh*³

The examiner finds that Caggiano discloses a container comprising a bag with liquid impervious walls having inner and

¹(...continued)
reference (e.g., Brief, page 4), we hold this omission to be harmless.

²The examiner does not recite the Trinh reference in the statement of the rejection of claims 6 and 10, even though claims 6 and 10 depend on claims 1 and 8, respectively, and claims 1 and 8 were rejected using Trinh as a secondary reference (Answer, page 3). Since appellants do not separately contest the rejection of claims 6 and 10 (Brief, page 4), and we summarily affirm this rejection for reasons stated *infra*, we hold the examiner's error harmless.

³A discussion of Kannankeril is unnecessary to our decision. See *In re Kronig*, 539 F.2d 1300, 1302-03, 190 USPQ 425, 426-27 (CCPA 1976).

outer surfaces and an absorbent material disposed on the inner surface of the container which may be impregnated with a desiccant such as calcium chloride, silica gel or any other suitable desiccant material (Answer, page 3). The examiner admits that Caggiano fails to disclose an odor-neutralizing composition comprising cyclodextrin (Answer, page 4). The examiner applies Trinh for the disclosure of an absorbent article having an odor control system comprising the combination of cyclodextrin and other well known odor controlling materials (*id.*). The examiner concludes that since some of the desiccants taught by Caggiano are well known absorbents and odor control agents, it would have been obvious to one of ordinary skill in this art at the time of appellants' invention to add cyclodextrin to the absorbent layer of Caggiano for its attendant advantages, including better odor control (Answer, pages 3-4). We agree.

Appellants argue that Caggiano does not teach depositing an effective amount of an odor-neutralizing composition upon an absorbent material or the placement of the absorbent material inside the container (Brief, page 3).

These arguments are not persuasive. Caggiano clearly teaches the placement of the absorbent material inside the "container" or laminated packaging material (e.g., see Figure 1). Appellants

contradict their own argument by stating that Caggiano discloses the "absorbent layer may or may not be adhesively attached to the inner surface of the outer layer of the moisture impermeable material" (Brief, sentence bridging pages 2-3, citing col. 4, ll. 42-44, of Caggiano). Therefore Caggiano clearly discloses a "liquid impervious wall having inner and outer surfaces," as well as an absorbent material inside the "container" or laminated packaging material.

With regard to the odor-neutralizing composition, the examiner finds that the silica gel and activated carbon desiccants taught by Caggiano were also well known odor-neutralizing materials in the art (Answer, page 5). We note that Caggiano teaches that activated charcoal "serves to absorb vapors other than water present inside the sealed package." Col. 3, l. 66-col. 4, l. 2. This teaching would have reasonably suggested to one of ordinary skill in the art that the use of activated charcoal as a desiccant in Caggiano would also act as an odor-controlling agent. Furthermore, Trinh teaches that particulate carbon, silica gel, activated alumina, activated carbon, and zeolites were well known odor-controlling agents (col. 1, ll. 29-66).⁴ Accordingly, we determine that it would have been

⁴We further note that EP '390, applied against claims 6 and
(continued...)

obvious to one of ordinary skill in this art to apply the teachings of Trinh, who discloses the desirability of using cyclodextrin in combination with other odor controlling agents, to the absorbent material with a desiccant in the sealed packaging material of Caggiano.

For the foregoing reasons and those stated in the Answer, we determine that the examiner has established a *prima facie* case of obviousness in view of the reference evidence. Based on the totality of the record, including due consideration of appellants' arguments, we determine that the preponderance of evidence weighs most heavily in favor of obviousness within the meaning of section 103(a). Accordingly, the rejection of claims 1-5 and 7-9 under section 103(a) is affirmed.

B. The Rejection over Caggiano, Kannankeril and EP '390

With regard to the separate rejection of claims 6 and 10 under section 103(a) over Caggiano or Kannankeril in view of EP '390 (Answer, page 4), appellants present no separate arguments (Brief, page 2, ¶VII, and page 4, ¶VIII, last sentence). Therefore we

⁴(...continued)
10, additionally teaches that activated carbons, clays, zeolites, silicas and starches were well known in the art as odor controlling agents (page 2, ll. 20-21).

Appeal No. 2005-1026
Application No. 09/831,782

summarily affirm the examiner's rejection, adopting the examiner's findings of fact and conclusions of law.


C. Summary

The rejection of claims 1-5 and 7-9 under 35 U.S.C. § 103(a) over Caggiano or Kannankeril in view of Trinh is affirmed. The rejection of claims 6 and 10 under 35 U.S.C. § 103(a) over Caggiano or Kannankeril in view of EP '390 is affirmed.

Appeal No. 2005-1026
Application No. 09/831,782

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED


CHARLES F. WARREN
Administrative Patent Judge

THOMAS A. WALTZ
Administrative Patent Judge

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

Beverly A. Pawlikowski
BEVERLY A. PAWLIKOWSKI
Administrative Patent Judge

TAW/jrg

Appeal No. 2005-1026
Application No. 09/831,782

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224